IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4144 OF 2005

Shri Avinash Govindrao More ... Petitioner

V/s

The Nashik Merchant Co-op. Bank Ltd., Nashik & ors. ... Respondents

Mr. Uday P. Warunjikar for the petitioner.

Mr. R.M.Haridas with Mr. P.N. Joshi for the respondents.

CORAM: H.L. GOKHALE &
J.H. BHATIA, JJ.

DATED: 29TH JUNE, 2006

P.C.:

1. Heard Mr. Warunjikar in support of this petition. Mr. Haridas appears for the respondents with Mr. P.N. Joshi. The petitioner seeks to challenge some of the provisions of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002. That Act has already been held valid by the Apex Court in the judgment rendered in the case of **Mardia Chemicals Ltd., v/s Union of India, reported in (2004) 4 SCC 311.** Therefore the challenge no longer surrives. Mr. Warunjikar makes a request that since the

possession of the secured asset is already been taken by the 1st respondent bank, the petitioner may now move the Debt Recovery Tribunal under Sec. 17 of the Act. His only request is that the time taken during the pendency of this petition be excluded while computing the limitation.

2. Mr. Haridas objects to this submission. He submits that the petitioner should have moved within the time limit provided after the Vacation Judge passed his order on 18.5.2004.

3. We have noted the submission of Mr. Haridas. The fact remains that this proceeding was pending in this Court. Although there is some merit, namely, that the petitioner should have moved for getting this petition disposed of after learning about the challenge to the Act being upheld by the Apex Court, even so, we accept this submission of Mr. Warunjikar considering that, parties at times are not aware about the development in the field of law. The judgment of the Apex Court may not have been brought to the notice of the petitioner. This being so, although we dispose of this petition, we clarify that, in the event the petitioner moves an appropriate proceeding before the Debt Recovery Tribunal

within 45 days, which is the time provided under that Act, the application will not be rejected only on the ground of limitation.

4. Petition disposed of.

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(H.L. Gokhale, J.)

(J.H. Bhatia, J.)